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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/778,762	02/08/2001	Marcio Marc Abreu	P66081US1	4160
136 7590 08/23/2007 JACOBSON HOLMAN PLLC 400 SEVENTH STREET N.W. SUITE 600 WASHINGTON, DC 20004			EXAMINER NAJARIAN, LENA	
			ART UNIT 3626	PAPER NUMBER
			MAIL DATE 08/23/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

09/778,762

Applicant(s)

ABREU, MARCIO MARC

Examiner

Lena Najarian

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 June 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 66-73 and 77-79 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 66-73 and 77-79 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Notice to Applicant***

1. This communication is in response to the Request for Continued Examination (RCE) filed 6/13/07. Claims 66-73 and 77-79 remain pending.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 66-71 and 77-79 are rejected under 35 U.S.C. 103(a) as being unpatentable over Suliman, JR et al. (US 2001/0053980 A1) in view of Schrier et al. (5,833,599).

(A) Referring to claim 66, Suliman discloses a device for acquiring data comprising (para. 12 of Suliman):

means for acquiring data (Fig. 3 and para. 53 of Suliman);

a processor; and a memory connected to the processor and storing a program for controlling operation of the processor (Fig. 1 and para. 11 of Suliman);

said processor operative with the program in the memory to receive user data, the data being product identification, determine if the data received

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interacts with products being stored in the memory, and display the interaction information (para. 64, para. 13, para. 38, and para. 39 of Suliman).

Suliman does not disclose at least one of a product-to-product interaction and a biological variable-to-product interaction.

Schrier discloses a product-to-product interaction (see col. 11, line 48 – col. 12, line 37 of Schrier).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the aforementioned feature of Schrier within Suliman. The motivation for doing so would have been to prevent adverse reactions from occurring (col. 8, lines 4-8 of Schrier).

Insofar as the claim recites “at least one of,” it is immaterial whether or not the other elements are also disclosed.

(B) Referring to claim 67, Suliman discloses means for transmitting data (para. 11 of Suliman).

(C) Referring to claim 68, Suliman discloses wherein the means for transmitting data includes a distributed computer network (Fig. 1 and para. 36 of Suliman).

(D) Referring to claim 69, Suliman discloses wherein the means for acquiring data includes a bar code reader (para. 53 of Suliman).

(E) Referring to claim 70, Suliman discloses in a system to monitor products purchased by a user in which an identification card having a code recorded thereon is applied as linking the products purchased to the user identified by the card to enable identification of the user as participating in a recall and warning notification program, the system comprising (para. 12 and para. 13 of Suliman):

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a checkout station (para. 12 of Suliman);

an identification card having recorded thereon an identification code indicating the user as participating in the recall and warning notification program (para. 10 and para. 12 of Suliman);

a card reader at said checkout station and operated for reading the identification code indicating the user as participating in the recall and notification program (para. 45 of Suliman);

a data input device at said checkout station for inputting data representing the products being purchased by said user (Fig. 3 of Suliman);

a storage device for storing the data acquired at said checkout station (para. 42 of Suliman);

a communication device for transmitting the acquired data (para. 59 of Suliman); and

a display device for displaying the acquired data to a central server, said central server adapted to transmit information to said user (para. 42 and para. 29 of Suliman).

Suliman does not disclose offering alternative products to a harmful product to a user.

Schrier discloses offering alternative products to a harmful product to a user (col. 1, line 58 – col. 2, line 9 of Schrier).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the aforementioned feature of Schrier within

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Suliman. The motivation for doing so would have been to provide an option that would not have an adverse reaction (col. 8, lines 4-8 of Schrier).

(F) Referring to claim 71, Suliman discloses in a system to monitor products purchased by a user in which an identification card having a code recorded thereon is applied as linking the products purchased to the user identified by the card to enable identification of the user as participating in a recall and warning notification program, the system comprising (para. 12 and para. 13 of Suliman):

- a checkout station (para. 12 of Suliman);

- an identification card having recorded thereon an identification code indicating the user as participating in a recall and warning notification program (para. 10 and para. 12 of Suliman);

- a data input device at said checkout station for inputting data representing the products being purchased by said user (Fig. 3 of Suliman); and

- a card writer at said checkout station and operated for writing indicia onto the card representing the products purchased by said user (para. 45 of Suliman);

and

- a central server adapted to transmit information to said user (para. 29 of Suliman).

Suliman does not disclose an alternative product program and an alternative product to a harmful or recalled product.

Schrier discloses an alternative product program and an alternative product to a harmful or recalled product (col. 1, line 58 – col. 2, line 9 of Schrier).

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At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the aforementioned feature of Schrier within Suliman. The motivation for doing so would have been to provide an option that would not have an adverse reaction (col. 8, lines 4-8 of Schrier).

(G) Referring to claim 77, Suliman discloses an apparatus comprising:

a hand-held device for entering and storing product information data and consumer identifiers; a data entering device for entry of data into said hand-held device; a processor for identifying an interaction; and a display device (Fig. 3, para. 12, para. 13, para. 38, and para. 39 of Suliman).

Suliman does not disclose biological variables and at least one of a product-to-product interaction and a biological variable-to-product interaction.

Schrier discloses biological variables and product-to-product interaction (see col. 11, line 48 – col. 12, line 37 of Schrier).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the aforementioned feature of Schrier within Suliman. The motivation for doing so would have been to prevent adverse reactions from occurring (col. 8, lines 4-8 of Schrier).

Insofar as the claim recites “at least one of,” it is immaterial whether or not the other elements are also disclosed.

(H) Referring to claim 78, Suliman discloses wherein said hand-held device includes a communication device for receiving and sending information from/to a communication device (see Fig. 1 of Suliman).

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(I) Referring to claim 79, Suliman discloses wherein said data entering device includes a bar code reader (para. 53 of Suliman). Insofar as the claim recites "at least one of," it is immaterial whether or not the other elements are also disclosed.

4. Claims 72 and 73 are rejected under 35 U.S.C. 103(a) as being unpatentable over Suliman, JR et al. (US 2001/0053980 A1) in view of Schrier et al. (5,833,599), and further in view of Ware (4,707,592).

(A) Referring to claims 72 and 73, Suliman and Schrier do not expressly disclose wherein the identification code of said identification card is magnetically encoded on a magnetic stripe and wherein the identification code of said identification card is optically encoded as a bar code.

Ware discloses wherein the identification code of said identification card is magnetically encoded on a magnetic stripe and wherein the identification code of said identification card is optically encoded as a bar code (see col. 2, lines 31-40 of Ware).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the aforementioned features of Ware within Suliman and Schrier. The motivation for doing so would have been to provide a suitable type of encoding in order to verify the card-carrying person's identity (col. 2, lines 31-40 of Ware).



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***Affidavits***

5. The declaration filed on 5/11/07 under 37 CFR 1.131 has been considered but is ineffective to overcome the Suliman, Jr. et al. (US 2001/0053980 A1) reference.

6. The evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of the Suliman, Jr. reference to either a constructive reduction to practice or an actual reduction to practice. While conception has been established, a draft of the provisional application is not sufficient to establish reduction to practice.

***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lena Najarian whose telephone number is 571-272-7072. The examiner can normally be reached on Monday - Friday, 9:30 am - 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on 571-272-6776. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

In  
8-9-07  
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